

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 4:11 CR 101
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
DERRICK JOHNSON, JR.,)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
Defendant.)	

This matter comes before the Court upon Defendant, Derrick Johnson's Motion to Correct Sentence Pursuant to Federal Criminal Rule 35. (ECF #646). Mr. Johnson, through his counsel, claims that he was erroneously sentenced for Count 7 of the Indictment under 18 U.S.C. §924(c)(1)(A)(iii), and that his sentence on this count should have been calculated based on a violation of 18 U.S.C. § 924 (c)(1)(A)(i). Subsection (i) carries a five year mandatory minimum sentence, rather than the ten year mandatory minimum sentence required under subsection (iii). In addition, Mr. Johnson argues that for Count 32 his sentence should also have been based on a violation of 18 U.S.C. §924(c)(i)(A)(i) rather than 18 U.S.C. § 924(c)(a)(C)(i). Subsection (c)(1)(C)(i) carries a twenty-five year mandatory minimum in the case of second or subsequent convictions under the statute. These arguments were raised, argued, and addressed at Mr. Johnson's sentencing. (Sentencing Tr. At 18-29, 58-59). The current motion presents no new information that would impact Mr. Johnson's sentence, and all of the relevant information relating to Mr. Johnson's motion was taken into consideration by the Court when his sentence

was imposed. The Court found at sentencing that the jury's verdict, and the evidence presented at trial supported a sentence under 18 U.S.C. §924(c)(1)(A)(iii) for Count 7, and under 18 U.S.C. §924 (c)(1)(C)(i) for Count 32. For this reason, and all other reasons previously discussed at his sentencing, Defendant's Motion (ECF #646) is DENIED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: February 27, 2013